



REPORT TO COUNCIL

City of Sacramento

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915 I Street, Sacramento, CA 95814-2604
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CONSENT
April 27, 2010

Honorable Mayor and
Members of the City Council

Title: Ordinance: Chapter 12 of City Code Relating to Sidewalk Repair, Maintenance, and Liability

Location/Council District: Citywide

Recommendation: 1) Review an **Ordinance** repealing and reenacting Chapter 12.32 of the Sacramento City Code relating to Sidewalk Repair, Maintenance and Liability and amending section 18.04.020 of the Sacramento City Code relating to Street Dedications and Improvements and 2) pass for publication the Ordinance title as required by Sacramento City Charter 32c to be adopted May 4, 2010.

Contact: Juan Montanez, Street Services Division Manager, 808-2254; Theresa Arnold, Special Projects Engineer, 808-5514.

Presenter: None

Department: Transportation

Division: Street Services

Organization No: 15001621

Description/Analysis

Issue: Existing city code requires that a defective sidewalk be repaired by removal and replacement. At the request of Council, staff investigated modifying the city code to allow temporary repairs, such as grinding. Allowing temporary repairs will reduce costs for property owners whose defective sidewalks meet certain criteria. If a property owner does not affirmatively approve a temporary repair and the City must repair the defective sidewalk, then the defective sidewalk will be removed and replaced.

The reenacted ordinance will allow grinding as an alternative temporary repair in some situations; clarify the existing collection procedures for property owners who fail to reimburse the City for its costs to repair a defective sidewalk; remove

collection procedures that the City no longer uses; and modify the liability and indemnity provisions so that they are consistent with current law. In addition, current section 12.32.270, concerning sidewalk construction (as opposed to maintenance and repair) is being repealed and its substance amended and moved to section 18.04.020B. as this makes greater organizational sense.

Policy Considerations: The proposed reenacted ordinance changes the liability and indemnity sections of the ordinance to conform to recent court cases. Recent cases have held that a city may not exonerate itself from liability for the dangerous condition of a sidewalk by making the adjacent property owner solely liable to an injured third party. The reenacted ordinance does not absolve the City from liability but does impose a duty on the adjoining property owner for injuries or damages caused by a defective sidewalk. In addition, the indemnity section of the reenacted ordinance allows the City to seek indemnity from an adjacent property owner except in the case where the damages or injuries are caused by a City instrumentality. Pursuant to Streets and Highway Code sections 5610 and following, the ordinance continues to allow the City to require the property owner to repair a defective sidewalk at the property owner's expense.

Environmental Considerations:

California Environmental Quality Act (CEQA): This activity is exempt from environmental review per CEQA Guidelines section 15301(c) "repair, maintenance, minor alteration... of existing streets, sidewalks, gutters, bicycle and pedestrian trails and similar facilities."

Sustainability Considerations: The proposed Ordinance is consistent with the City's Sustainability Master Plan because it will reduce the amount of waste concrete generated and the use of new concrete raw materials. Fewer trees will need to be removed because of root issues with the adjoining sidewalk.

Commission/Committee Action: This item was heard by the Law and Legislation Committee on April 6, 2010 and is now being forwarded to Council for approval.

Rationale for Recommendation: The proposed ordinance will provide, when appropriate, alternative means to address sidewalk defects through temporary repairs, such as grinding. Although temporary, the alternatives will allow the City to correct defects in an expedited manner and delay the financial burden for property owners until such time permanent measures become necessary. The proposed ordinance will also clarify collection practices so that the code is consistent with current practice and modify the liability and indemnity sections to comply with law.

Financial Considerations: There is no financial impact to the City as a result of the proposed ordinance described herein.

Emerging Small Business Development (ESBD): No goods or services are being purchased as a result of this report.

Respectfully Submitted by: _____


Juan Montañez
Street Services Manager

Approved by: _____


Jerry Way
Director of Transportation

Recommendation Approved:

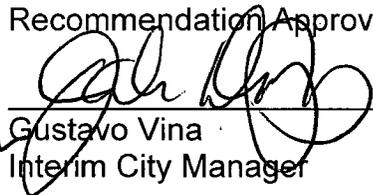

Gustavo Vina
Interim City Manager

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REDLINE VERSION

ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted:

**AN ORDINANCE REPEALING AND RENACTING CHAPTER 12.32 OF
THE SACRAMENTO CITY CODE RELATING TO
SIDEWALK REPAIR, MAINTENANCE AND LIABILITY
AND AMENDING SECTION 18.04.020 OF THE SACRAMENTO CITY CODE
RELATING TO STREET DEDICATIONS AND IMPROVEMENTS**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1

Chapter 12.32 of the Sacramento City Code is repealed.

SECTION 2

Chapter 12.32 of the Sacramento City Code is reenacted as follows:

CHAPTER 12.32 SIDEWALK REPAIR, MAINTENANCE AND LIABILITY

12.32.010 Definitions.

As used in this chapter, the terms listed below shall have the meaning assigned them.

“Director” means the director of the department of transportation, or designee; “director” shall have the same meaning as the terms “superintendent of streets” and “city engineer” as those terms are utilized in the Streets and Highways Code, Division 7, Part 3, Chapter 22, as those provisions now exist or are hereafter amended or renumbered.

“Repair” means elimination of a defective sidewalk by removal and replacement of all or a portion of the existing sidewalk or by other methods.

“Defective sidewalk” means a sidewalk where, in the judgment of the director, the vertical or horizontal line or grade is altered or displaced or such other condition exists that interferes with the public convenience in the use of the sidewalk.

“Owner” means a person owning a lot, lots or portion of a lot within the city of Sacramento, and fronting any portion of a public street, alley or other place, where a

sidewalk exists.

“Lot,” “lots” or “portion of a lot” means a parcel of real property located within the city of Sacramento, fronting any portion of a public street, alley or other place where a sidewalk exists. When used in connection with the words, “fronting the defective sidewalk,” or variation thereof, it shall refer to the property in front of or along the side of the defective sidewalk.

12.32.020 Owner’s duty to repair defective sidewalk.

An owner shall maintain and repair any defective sidewalk fronting such owner’s lot, lots or portion of a lot. Where a defective sidewalk is caused in whole or in part by a tree root or roots, the owner shall nevertheless have the duty to repair the sidewalk. The director may grant permission to cut the root(s) after consulting with the city arborist.

12.32.030 Enforcement of chapter; specifications.

The director shall enforce this chapter and establish criteria and specifications for each type of repair.

12.32.040 Civil liability for injuries.

Each owner required by section 12.32.020 to repair a defective sidewalk shall owe a duty to members of the public to keep and maintain the sidewalk area in a non-defective condition. If, as a result of the failure of any owner to maintain or repair the sidewalk as required by section 12.32.020, any person suffers injury or property damage, the property owner shall be liable to such person for the resulting injury or damage.

12.32.050 Indemnity

An owner shall defend and indemnify the City and its employees from any action, claim, or judgment, and any cost or expense incurred, including attorneys’ fees, which arise from the owner’s failure to maintain and repair the sidewalk as required in section 12.32.020. Nothing in this section creates an obligation on an owner to defend or indemnify the city from any action, claim or judgment to the extent any employee or instrumentality of the city caused the defective sidewalk which resulted in the claimant’s injuries or damage.

12.32.060 Purpose of chapter

It is the purpose of this chapter to provide sidewalk repair procedures which are alternative and supplementary to the procedures set forth in the Streets and Highways Code, Division 7, Part 3, Chapter 22, commencing at Section 5600, as those sections now exist or may hereafter be amended or renumbered. The city, in each instance, may follow the procedure set forth in the Streets and Highways Code or those set forth in this chapter, or some combination thereof.

12.32.070 Notice to repair.

When the director has actual notice of the existence of a defective sidewalk, the director shall give written notice to the owner of the lot, lots or portion of the lot fronting the defective sidewalk, to repair the defective sidewalk. The director may also give notice to the person in possession of the lot, lots or portion of the lot, in addition to the notice given to the owner.

12.32.080 Service of notice.

The notice to repair shall be served on the owner by any of the following methods:

- A. Personal service of a copy of the notice on the owner;
- B. Mailing the notice to the owner by first class mail, postage prepaid, to the address of the owner as set forth on the last equalized assessment roll;
- C. Personal service of a copy of the notice on the person in possession of the lot, lots or portion of the lots, fronting the defective sidewalk, if a copy of the notice so served is also mailed to the owner in accordance with subsection B of this section;
- D. Posting the notice in a conspicuous place at the lot or lots fronting the defective sidewalk, if a copy of the notice so posted is also mailed to the owner in accordance with subsection B of this section;

If the notice is served on the owner by mail, the director shall, not more than thirty (30) days after the mailing of the initial notice to repair, mail to the owner in the same manner an additional notice to repair, marked "second notice," containing the same information set forth in the initial notice.

12.32.090 Contents of notice.

The notice to repair shall, at a minimum, contain the following information:

- A. That the sidewalk is a defective sidewalk.
- B. The nature of the work required to be done, and the cost as estimated by the city.
- C. The manner in which the work is to be done, including the specifications required by the city as to materials and workmanship.
- D. That if the repair is not commenced within the time specified in this chapter, or once commenced is not completed diligently and without interruption, the director shall immediately commence and complete the repair and the cost thereof shall become a lien on the lot or lots of the owner, fronting the defective sidewalk.
- E. Provide that the owner may elect to perform the repairs himself or herself, have the work performed by a licensed contractor, or have the work performed by the city, through a contractor selected by the city or with city employees.
- F. An agreement, in a form established by the director, which sets forth the

election of the owner and the city's requirements with respect to the manner in which the repairs must be performed.

12.32.100 Time for commencement and completion of repairs by owner.

The owner shall commence the repairs required by the notice to repair within sixty (60) days after the owner elects either to personally perform the repairs, or hire a licensed contractor to perform the repairs, or within sixty (60) days after service of the second notice, whichever occurs first. Once commenced, the repairs shall be completed diligently and without interruption.

12.32.110 Failure to make required repairs.

If, after notice to repair has been served, the owner fails to make the repairs required by the notice within the time set forth in this chapter or fails to respond and execute the agreement, the director shall, within a reasonable period of time, cause the city to make the required repairs, and the cost shall be a lien on the lot or lots of the owner, fronting the defective sidewalk. If the city is required to make the repairs because the owner fails to respond and execute the agreement or fails to make the repairs required by the notice, the city will repair the defective sidewalk by means of removal and replacement of the existing sidewalk.

12.32.120 Payment for repairs.

A. The owner is responsible to pay the cost of all work provided by the city in connection with the repair of a defective sidewalk, including administrative and inspection costs, upon receipt of an invoice from the city.

B. If the owner has not provided payment 30 days after receipt of an invoice for the work provided by the city for repair of a defective sidewalk, the director of finance may initiate proceedings to make the cost of the work performed by the city a special assessment against the parcel(s) of property fronting the repaired sidewalk(s).

C. Notwithstanding any contrary provision of this chapter or the Streets and Highways Code, if the owner demonstrates to the reasonable satisfaction of the city director of finance or designee that payment of the cost of repair of the defective sidewalk will constitute a severe financial hardship on the owner, then no action shall be taken to collect the repair cost provided that the owner enters into an agreement to pay the costs on terms acceptable to the director of finance. The city manager shall have the authority to enter into and execute the agreement for the city. If the owner fails to perform the agreement, then the city shall have the right to collect the costs in the amount then owing after ten (10) days written notice is given to the owner. This remedy shall be in addition to any other remedies at law or in equity which the city may have.

12.32.130 Assessing costs of sidewalk repairs upon nonpayment of invoice.

A. If the owner has not provided payment 30 days after receipt of an invoice for the work provided by the city for repair of a defective sidewalk, the director of finance may initiate proceedings to make the cost of the work performed by the city a special assessment against the parcel(s) of property fronting the repaired sidewalk(s).

B. The director of finance shall issue a Notice of Special Assessment to all owners who fail to pay for the work provided by the city for repair of a defective sidewalk. This notice shall provide a process for the owner to dispute the amount due with city staff; set forth a due date for payment; and provide a process for the owner to obtain a hearing before a lien hearing officer appointed by the city manager.

C. In order for the owner to obtain a hearing before a lien hearing officer, the owner must first protest the charges with city staff. The notice shall be mailed to the address of the owner as shown on the last equalized assessment roll or such other address of the owners as may be known to the director of finance. The notice shall set the date and time by which shall be filed with the director of finance. No objection or protest received after that date and time shall be considered.

12.32.140 Lien protest process

A protest must be submitted in writing by way of personal delivery, email, fax, or mail. City staff will investigate the protest, and at the conclusion of the city staff resolution process, a "Finding of Facts" letter will be prepared and mailed to the owner. If the owner disagrees with city staff findings, he or she may request a formal hearing before a lien hearing officer.

12.32.150 Notice of hearing

The director of finance shall cause notice of the hearing before the lien hearing office to be mailed to an owner who requests a hearing. Notice shall be mailed not less than ten (10) days prior to the date of the hearing. The notice shall be mailed to the address of the owner as shown on the last equalized assessment roll or such other address of the owner as may be known to the director of finance.

12.32.160 Hearing and decision

At the time fixed for consideration of the protest, the lien hearing officer shall hear the matter from City staff, together with any objections and evidence, of the owner(s) liable to be assessed for the cost of repair or reconstruction. The lien hearing officer shall follow, as nearly as practicable, those procedures that the city council would have followed had it conducted the hearing. The lien hearing officer may make revisions, corrections, or modifications of the matter as he or she may deem just, and shall submit the report (as revised, corrected or modified) to the city finance staff for adjustment and/or collection. The director of finance shall send the results of the hearing to the protesting owner by first class mail and shall include the date and time of the public hearing to be held by the city council in accordance with Section 12.32.170 of this chapter. The decision of the lien hearing office on the report and on all protests or objections shall be final and conclusive.

12.32.170 Hearing before city council – Special Assessment confirmed – Manner of collection – Time for contest of assessment.

Upon receipt of the director of finance's report, the city council shall schedule a public hearing at which it shall confirm, reject or modify the report. The public hearing

shall be limited to the issue of whether the hearing before the lien hearing officer was conducted in accordance with applicable city ordinances. Only those owners who both file an objection or protest and appear before the lien hearing officer shall be permitted to protest at the city council meeting.

Upon confirmation of the report by the city council, the sidewalk repair costs contained therein shall constitute a special assessment against the property fronting the repaired sidewalks. Thereafter, such assessment may be collected at the same time and in the same manner as ordinary secured property taxes are collected, and shall be subject to the same penalties and the same procedures of sale as provided for delinquent ordinary secured property taxes. The assessments shall be subordinate to all existing special assessment liens previously imposed upon the property and paramount to all other liens except those for state, county and municipal taxes with which it shall be upon parity. The lien shall be continued until the assessment and all interest and penalties due and payable thereon are paid. All laws applicable to the levy, collection and enforcement of secured property taxes shall be applicable to such special assessments.

The validity of any assessment made under the provisions of this title shall not be contested in any action or proceeding unless the same is commenced within thirty (30) days after the assessment is confirmed by the city council.

SECTION 3

Section 18.04.020 of the Sacramento City Code is amended to read as follows:

18.04.020 Generally.

A. No building or structure shall be erected or enlarged, and no building permit shall be issued therefore, on any lot if the lot abuts on a dedicated street, or a future street designated on a community plan, or on a street right-of-way designated in the current right-of-way width guidelines established pursuant to Section 18.04.170 of this chapter, unless:

1A. The one-half of the street or streets located on the same side of the street centerline as the lot has been dedicated and improved for the full street frontage of the lot and one traffic lane on the far side of the street for travel is constructed in accordance with the dedication and improvement standards for such street or streets pursuant to Sections 18.04.170, 18.04.180, 18.04.190 and other applicable provisions of this chapter; or

2B. Such dedication and improvements have been assured to the satisfaction of the city's director of transportation ~~public works~~ or the director's designated representative.

The dedication and improvement requirements of this chapter shall also apply to the construction or alteration of all off-street parking areas, off-street loading or unloading areas, off-street pickup and delivery areas, and storage, sale, rental or service areas which are subject to the requirements of Chapter 10.24 of this code. The

term "building permit," as used in this chapter, shall include the permit required by Chapter 10.24.

As used in this chapter, the word "lot" shall mean and include one lot or parcel of record, or more than one individual lots or parcels of record which have been combined for purposes of development, construction or improvement as a single unit of land.
(Ord. 99-017 § 1: prior code § 38.11.124)

B.1. An owner of real property fronting a public street that is improved with street paving and curbs and gutters shall not be issued a building permit for new construction when concrete sidewalks have not been installed unless the owner, either as part of the construction covered by the building permit or under separate agreement satisfactory to the building inspector, constructs public sidewalks to city standards.

2. The provisions of this subsection B shall apply to all property in other than residential use except in industrial areas where a "V" type curb and gutter has been installed.

3. The provisions of this subsection B shall only apply to property in residential use in blocks where the frontage of existing sidewalks, when added to the frontage of unimproved properties, constitutes more than fifty (50) percent of the front footage of such block.

4. The term "block" as used in this section means property facing one side of any street between an intersecting street and the next intersecting street or between an intersection street and the end of a street which terminates in other than an intersection.

5. The city council may, upon application of a property owner affected by the provisions herein, waive the requirements for installation of sidewalks because of unusual circumstances or hardship.

Attachment 2

CITY CODE TO BE REPEALED

CHAPTER 12.32 SIDEWALK CONSTRUCTION AND REPAIR

12.32.010 Definitions.

As used in this chapter, the terms listed below shall have the meaning assigned them.

“Director” means the director of the department of public works, or designee; “director” shall have the same meaning as the terms “superintendent of streets” and “city engineer” as those terms are utilized in the Streets and Highways Code, Division 7, Part 3, Chapter 22, as those provisions now exist or are hereafter amended or renumbered.

“Repair” means removal of all or a portion of the existing sidewalk, as specified by the director, and replacement in kind to specifications established by the director, to a plane surface equivalent to that which existed prior to any sidewalk damage.

“Defective sidewalk” means a sidewalk where, in the judgment of the director, the vertical or horizontal line or grade is altered or displaced to an extent that a safety hazard exists or the sidewalk is in such a condition as to endanger persons or property or is in such a condition as to interfere with the public convenience in the use thereof.

“Person” means any natural person, a partnership, corporation, or other entity, public or private.

“Owner” means any person owning a lot, lots or portion of a lot within the city of Sacramento, and fronting on any portion of a public street, alley or place where a sidewalk exists.

“Lot,” “lots” or “portion of a lot” means a parcel of real property located within the city of Sacramento, fronting on any portion of a public street, alley or place where a sidewalk exists. When used in connection with the words, “fronting on the defective sidewalk,” or variation thereof, it shall refer to the property in front of or along the side of the defective sidewalk. (Prior code § 38.07.071)

12.32.020 Owner’s duty to repair defective sidewalk.

An owner shall have the duty to repair any defective sidewalk fronting on such owner’s lot, lots or portion of a lot. Where the defective sidewalk is caused in whole or in part by a tree root or roots, the owner shall nevertheless have the duty to repair the sidewalk, but the director may grant permission to cut the root; provided, however, that if the root is other than a surface root, the director shall consult with the department of parks and community services concerning the manner of dealing with the subsurface root. (Prior code § 38.07.072)

12.32.030 Enforcement of article.

The city manager, through the director, shall enforce this article. (Prior code § 38.07.073)

12.32.040 Civil liability for injuries.

An owner who has a defective sidewalk fronting on such owner's lot, lots or portion thereof shall bear the civil liability, if any, to a person suffering personal injury or property damage caused by the defective sidewalk. In the event that the city is held liable in any civil action for damages for personal injury or property damage caused by a defective sidewalk, the city shall be entitled to full indemnity from the owner. (Prior code § 38.07.074)

12.32.050 Purpose of article.

It is the purpose of this article to provide sidewalk repair procedures which are alternative and supplementary to the procedures set forth in the Streets and Highways Code, Division 7, Part 3, Chapter 22, commencing at Section 5600, as those sections now exist or may hereafter be amended or renumbered. The city, in each instance, may follow the procedure set forth in the Streets and Highways Code or those set forth in this article, or some combination thereof. (Prior code § 38.07.075)

12.32.060 Notice to repair.

When the director has actual notice of the existence of a defective sidewalk, the director shall give written notice to the owner of the lot, lots or portion thereof fronting on the defective sidewalk, to repair the defective sidewalk. The director may also give such notice to the person in possession of the said lot, lots or portion thereof, in addition to the notice given to the owner. (Prior code § 38.08.076)

12.32.070 Service of notice.

The notice to repair shall be served on the owner by any of the following methods:

- A. Personal service of a copy of the notice on the owner;
- B. Mailing the notice to the owner by first class mail, postage prepaid, to the address of the owner as set forth on the last equalized assessment roll;
- C. Personal service of a copy of the notice on the person in possession of the lot, lots or portion thereof, fronting on the defective sidewalk, if a copy of the notice so served is also mailed to the owner in accordance with subsection B of this section;
- D. Posting the notice in a conspicuous place at the lot or lots fronting on the defective sidewalk, if a copy of the notice so posted is also mailed to the owner in accordance with subsection B of this section;

If the notice is served on the owner by mail, the director shall, not more than thirty (30) days after the mailing of the initial notice to repair, mail to the owner in the same manner an additional notice to repair, marked "second notice," containing the same information as was set forth in the initial notice. (Prior code § 38.08.077)

12.32.080 Contents of notice.

The notice to repair shall, at a minimum, contain the following information:

- A. That the sidewalk is a defective sidewalk;
- B. The nature of the work required to be done, and the cost as estimated by the city;
- C. The manner in which the work is to be done, including the specifications required by the city as to materials and workmanship; and
- D. That if the repair is not commenced within the time specified in this chapter, or once commenced is not prosecuted diligently and without interruption to completion, the director shall immediately commence and complete the repair, and the cost thereof shall become a lien on the lot or lots of the owner, fronting on the defective sidewalk. The director shall, in the notice to repair, provide that the owner may elect to perform the repairs himself or herself, have the work performed by a licensed contractor, or have the work performed by the city, through a contractor selected by the city. The director shall include with the notice an agreement, in such form as is established by the director, which sets forth the election of the owner and the city's requirements with respect to the manner in which the repairs must be performed. The owner shall make the election on the agreement and shall execute it and return it to the director forthwith. If the owner elects to have the repairs performed by the city, the director shall cause the work to be performed by the city within a reasonable period of time thereafter.

In addition, if bonds are to be issued to represent the security of any unpaid assessment, and the city council has adopted a resolution to that effect, the notice to repair shall specify that bonds are to be issued for that purpose, payable over a period of not to exceed six years, and that the maximum interest rate of interest on the unpaid indebtedness shall not exceed the rate permitted by Section 53531 of the Government Code, payable semiannually. (Prior code § 38.08.078)

12.32.090 Time for commencement and completion of repairs by owner.

The owner shall commence the repairs required by the notice to repair within sixty (60) days after the owner elects either to perform the repairs himself or herself, or hire a licensed contractor to perform the repairs, or within sixty (60) days after service of the second notice, whichever occurs first, and once commenced the repairs shall be diligently and without interruption prosecuted to completion. (Prior code § 38.08.079)

12.32.100 Failure to make required repairs.

If, after notice to repair has been given, the owner fails to make the repairs required by the notice within the time prescribed in this chapter, the director shall within a reasonable period of time thereafter cause the city to make the required repairs, and the cost thereof shall be a lien on the lot or lots of the owner, fronting on the defective sidewalk. (Prior code § 38.08.080)

12.32.110 Assessment proceedings.

If the required repairs are made by the city, the director shall, upon the completion of the repairs, commence proceedings for assessment of the cost of the repair against the lot, lots or portions of a lot fronting on the defective sidewalk. The proceedings for levy and collection of the assessment shall be taken in accordance with the provisions of Streets and Highways Code Sections 5616 through 5630, as those sections now exist or as they may be amended or renumbered. (Prior code § 38.08.081)

12.32.120 Alternative payment plan for assessment.

Notwithstanding any provision of this title or of the Streets and Highways Code to the contrary, if the owner demonstrates to the reasonable satisfaction of the city director of finance or designee that the payment of the assessment for repair of the defective sidewalk will constitute a severe financial hardship on the owner, then no action shall be taken to collect the assessment lien provided that the owner enters into an agreement to pay such assessment on such terms as may be acceptable to the owner and the director of finance. The city manager shall have the authority to enter into and execute such agreement for the city. If the owner fails to perform the agreement, then the city shall have the right to collect said assessment lien in the amount then owing after ten (10) days written notice is given to the owner. This remedy shall be in addition to any other remedies at law or in equity which the city may have. (Prior code § 38.08.082)

12.32.130 Purpose of division.

The provisions of this article are intended as an alternative to the procedure set out in the Improvement Act of 1911 and to the procedure set out in Sections 12.32.070 to 12.32.120 of this chapter. (Prior code § 38.09.086)

12.32.140 Notice to repair—Required.

If any portion of any sidewalk, curb, park or parking strip in the city shall be out of repair or in a dangerous or defective condition, in a condition to endanger persons or property passing thereon or in a condition to interfere with the public convenience in the use thereof and the city engineer shall have personal notice of the same, he or she shall notify the owner or person in possession of the property fronting on that portion of the sidewalk, curb, park or parking strip so out of repair, to repair or reconstruct the same. (Prior code § 38.09.087)

12.32.150 Notice to repair—Service—Posting.

Such notice to repair or reconstruct may be served by written notice on the owner or to the person in possession of the property facing upon the sidewalk, curb, park, or parking strip so out of repair, or by mailing, postage prepaid, to the person in possession of such property or to the owner thereof at his or her last known address as the same appears on the tax rolls of the city, and when no address so appears, to the general delivery of the city, a notice to repair or reconstruct such sidewalk, curb, park, or parking strip so out of repair. If the notice to repair is served by mail, the city engineer shall, not less than seven days nor more than ten (10) days after the mailing of the initial notice to repair, cause an additional notice to repair, marked "Second Notice," to be mailed to the person to whom the first notice was addressed. (Prior code §

38.09.088)

12.32.160 Notice to repair—Contents.

The notice to repair required by this article shall specify what work is required to be done, how the same is to be done and what materials shall be used in such repair or reconstruction. Such notice shall also provide that, if such repairs, reconstruction or both are not commenced as required by this chapter, the person on whom notice is served shall appear before the city council, as provided in this chapter, and show cause why the city should not order the repair or reconstruction work to be done. (Prior code § 38.09.089)

12.32.170 Time limit on repairs.

The required repairs or reconstruction shall be commenced within three days after service of notice and diligently and without interruption prosecuted to completion on or before a regular council meeting which shall be specified in the notice to repair. (Prior code § 38.09.090)

12.32.180 Failure to make required repairs.

Upon the failure of the owner or the person in possession of the property to make the required repairs or reconstruction required by the notice to repair within the time prescribed by this article, such person shall appear at the meeting specified in the notice to repair and show cause why the city council should not order such repair work or reconstruction work to be done. (Prior code § 38.09.091)

12.32.190 Hearing.

At the time stated in the notice to repair, the city council shall, if the work has not been done as aforesaid, hear and consider all objections for the doing of such work. Upon the conclusion of such hearing, the city council shall, if it overrules such objections or if no objections be presented, be deemed to have acquired jurisdiction to proceed to order the work to be done at the expense of the property owner. (Prior code § 38.09.092)

12.32.200 Order to city engineer to make repairs, etc.

Upon acquiring jurisdiction to perform the work, as provided in Section 12.32.190 of this chapter, the city council shall, by resolution, order the city engineer to repair or reconstruct the improvement work and the city engineer is authorized to do and perform the same by day labor, and to employ labor and purchase materials necessary therefor, and the same shall be paid for from the general funds of the city. (Prior code § 38.09.093)

12.32.210 Report of city engineer as to repairs.

The city engineer shall keep an account of the cost of such repairs or reconstruction in front of each separate lot or parcel of land, and shall render an itemized report in writing to the city council showing the cost thereof in front of each separate lot; provided, that before the report is submitted to the city council, a copy of same shall be posted by the city clerk for at least three days prior thereto on the official bulletin board at or near the door to the office of the city clerk in the City Hall, together with a notice of the time when such report shall be submitted to the city council for

confirmation. (Prior code § 38.09.094)

12.32.220 Confirmation of report of city engineer.

At the time fixed for receiving and considering the report of the city engineer regarding the repairs made, the city council shall hear the same, together with any objections which may be raised by any of the property owners liable to be assessed for the cost of such improvement, and thereupon make such modifications in the report as they deem necessary, after which, by resolution, such report shall be confirmed. (Prior code § 38.09.095)

12.32.230 Cost of repairs to constitute special assessments.

The amount of the cost of the improvement in front of each parcel of land mentioned in the report of the city engineer regarding repairs made shall constitute special assessments against the respective parcels of land, and as thus made and confirmed shall constitute a lien on the property to the amount of such assessments respectively. After confirmation of such report, it shall be the duty of the auditor to add the amount of the respective assessments opposite the descriptions of the lands affected in the assessment roll of the city upon which taxes are next collected, and thereafter such amounts shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and to the same procedure as to foreclosure and sale as in cases of delinquency, as provided for ordinary municipal taxes.

Notwithstanding any provision in this article to the contrary, if the owner or property demonstrates to the reasonable satisfaction of the director of finance or his or her designee that the payment of the assessment lien for repairs will constitute a severe financial hardship on the owner, the auditor shall take appropriate action so that the assessment lien is not collected with the taxes next due, provided that the owner enters into an agreement to pay such assessment on such terms as may be acceptable to the owner and the director. The city manager shall have the authority to enter into and execute an agreement for the city. If the owner fails to perform the agreement, then the city shall have the right to take such action as may be necessary to collect the assessment amount then owing when the taxes on the property are next due, after ten (10) days written notice is given to the owner. This remedy shall be in addition to any other remedies at law or in equity which the city may have. (Prior code § 38.09.096)

12.32.240 Fee for reapportionment of assessment—Levied.

At such time as a property owner may request a reapportionment of an assessment or assessments under Sections 6480 to 6488, inclusive, or under Sections 8740 to 8740.5, inclusive, of the Streets and Highways Code, a fee shall be charged to cover the costs of making the reapportionment. (Prior code § 38.09.097)

12.32.250 Fee for reapportionment of assessment—Designated.

A. The fee to cover the cost of reapportionment, which shall include the five dollar fee payable under Section 6485 for each new bond issued and other administrative costs under Sections 6480 to 6488, inclusive, of the Streets and Highways Code, shall be thirty-five dollars (\$35.00) for each parcel to which a portion of the assessment or assessments are to be reapportioned. The amount of five percent or

ten dollars (\$10.00) added to the apportioned amount of each new bond under Section 6485 of the Streets and Highways Code shall be in addition to the fees herein specified.

B. The fee to cover the costs of reapportionment under Sections 8740 to 8740.5 inclusive, of the Streets and Highways Code, shall be forty-five dollars (\$45.00) for advertising costs, five dollars for recording fee, plus fifteen dollars (\$15.00) for each parcel to which a portion of the assessment or assessments are to be reapportioned. (Prior code § 38.09.098)

12.32.260 Fee for reapportionment of assessment—Payment to city treasurer.

The fee as set forth in Section 12.32.250 of this chapter shall be paid to the treasurer of the city at the time of the request for reapportionment. (Prior code § 38.09.099)

12.32.270 Owner to construct sidewalk.

Any owner of real property fronting upon a public street which is improved with street paving and curbs and gutters shall not be issued a building permit for any new construction when concrete sidewalks have not been installed unless said owner, either as a part of the construction covered by the building permit, or under separate arrangements satisfactory to the building inspector, constructs public sidewalks to city standards. Failure to so construct the required sidewalks shall constitute a violation of the Building Code.

The provisions of this section shall apply to all property in other than residential use except in industrial areas where a "V" type curb and gutter has been installed.

The provisions of this section shall only apply to property in residential use in blocks where the frontage of existing sidewalks, when added to the frontage of unimproved properties, constitutes more than fifty (50) percent of the front footage of such block.

The term "block" as used in this section means property facing one side of any street between an intersecting street and the next intersecting street or between an intersection street and the end of a street which terminates in other than an intersection. The term "unimproved property" means parcels of property not devoted by means of buildings or facilities to residential, commercial, or accessory uses.

Provided further the city council may, upon application of a property owner, affected by the provisions herein, waive the requirements for installation of sidewalks because of unusual circumstances or hardship. (Prior code § 38.10.110)

12.32.280 Alternative procedure for assessing costs of sidewalk repairs of reconstruction.

The provisions of this article are intended as an alternative to the procedures set forth in Articles II or III of this chapter for assessing the cost of sidewalk repairs or reconstruction performed by the city against the parcels fronting on the repaired sidewalk. (Prior code § 38.16.210)

12.32.290 Costs of sidewalk repairs or reconstruction imposed as special

assessment.

Not less often than once a year, the director of finance may initiate proceedings to make the cost of sidewalk repairs or reconstruction performed by the city pursuant to Articles II or III of this chapter a special assessment against the parcels of property fronting on the repaired sidewalks. (Prior code § 38.16.211)

12.32.300 Report transmitted to delinquency lien hearing office.

A report of costs incurred by the city for sidewalk repairs and reconstruction pursuant to Articles II or III of this chapter shall be transmitted by the director of finance to a delinquency lien hearing officer appointed by the city manager. Upon receipt of the report, the delinquency lien hearing officer shall fix a schedule for hearing the report and any protests or objections thereto. (Prior code § 38.16.212)

12.32.310 Notice of hearing.

The city clerk or director of finance shall cause notice of the hearing schedule before the delinquency lien hearing officer to be mailed to the owners of the real property fronting on the repaired or reconstructed sidewalks not less than ten (10) days prior to the date of the hearing. The notice shall be mailed to the address of the owner as shown on the last equalized assessment roll or such other address of the owner as may be known to the director of finance. The notice shall set the date and time by which objections or protests shall be filed with the director of finance. No objection or protest received after that date and time shall be considered. (Prior code § 38.16.213)

12.32.320 Hearing and decision.

At the time fixed for consideration of the report, the delinquency lien hearing officer shall hear it, together with any objections of the owners liable to be assessed for the costs of repair or reconstruction. The delinquency lien hearing officer shall follow, as nearly as practicable, those procedures that the city council would have followed if it had conducted the hearing. The delinquency lien hearing officer may make such revisions, corrections, or modifications of the report as he or she may deem just, and shall submit the report (as revised, corrected or modified) to the city clerk to be transmitted to the city council. The city clerk shall also send the results of the hearing to the objecting owners by first class mail and shall include the date of time of the public hearing to be held by the city council in accordance with Section 12.32.330 of this chapter. The decision of the delinquency lien hearing officer on the report and on all protests or objections shall be final and conclusive. (Prior code § 38.16.214)

12.32.330 Hearing before city council—Special assessment confirmed—Manner of collection—Time for contest of assessment.

Upon receipt of the delinquency lien hearing officer's report, the city council shall schedule a public hearing at which it shall confirm, reject or modify the report. The public hearing shall be limited to the issue of whether the hearing before the delinquency lien hearing officer was conducted in accordance with applicable city ordinances. Only those owners who both file an objection or protest and appear before the delinquency lien hearing officer shall be permitted to protest at the city council meeting.

Upon confirmation of the report by the city council, the sidewalk repair costs contained therein shall constitute a special assessment against the property fronting the repaired sidewalks. Thereafter, such assessment may be collected at the same time and in the same manner as ordinary secured property taxes are collected, and shall be subject to the same penalties and the same procedures of sale as provided for delinquent ordinary secured property taxes. The assessments shall be subordinate to all existing special assessment liens previously imposed upon the property and paramount to all other liens except those for state, county and municipal taxes with which it shall be upon parity. The lien shall be continued until the assessment and all interest and penalties due and payable thereon are paid. All laws applicable to the levy, collection and enforcement of secured property taxes shall be applicable to such special assessments.

The validity of any assessment made under the provisions of this title shall not be contested in any action or proceeding unless the same is commenced within thirty (30) days after the assessment is confirmed by the city council. (Prior code § 38.16.215)

Attachment 3

ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted:

**AN ORDINANCE REPEALING AND RENACTING CHAPTER 12.32 OF
THE SACRAMENTO CITY CODE RELATING TO
SIDEWALK REPAIR, MAINTENANCE AND LIABILITY
AND AMENDING SECTION 18.04.020 OF THE SACRAMENTO CITY CODE
RELATING TO STREET DEDICATIONS AND IMPROVEMENTS**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1

Chapter 12.32 of the Sacramento City Code is repealed.

SECTION 2

Chapter 12.32 of the Sacramento City Code is reenacted as follows:

CHAPTER 12.32 SIDEWALK REPAIR, MAINTENANCE AND LIABILITY

12.32.010 Definitions.

As used in this chapter, the terms listed below shall have the meaning assigned them.

“Director” means the director of the department of transportation, or designee; “director” shall have the same meaning as the terms “superintendent of streets” and “city engineer” as those terms are utilized in the Streets and Highways Code, Division 7, Part 3, Chapter 22, as those provisions now exist or are hereafter amended or renumbered.

“Repair” means elimination of a defective sidewalk by removal and replacement of all or a portion of the existing sidewalk or by other methods.

“Defective sidewalk” means a sidewalk where, in the judgment of the director, the vertical or horizontal line or grade is altered or displaced or such other condition exists that interferes with the public convenience in the use of the sidewalk.

“Owner” means a person owning a lot, lots or portion of a lot within the city of Sacramento, and fronting any portion of a public street, alley or other place, where a

sidewalk exists.

“Lot,” “lots” or “portion of a lot” means a parcel of real property located within the city of Sacramento, fronting any portion of a public street, alley or other place where a sidewalk exists. When used in connection with the words, “fronting the defective sidewalk,” or variation thereof, it shall refer to the property in front of or along the side of the defective sidewalk.

12.32.020 Owner’s duty to repair defective sidewalk.

An owner shall maintain and repair any defective sidewalk fronting such owner’s lot, lots or portion of a lot. Where a defective sidewalk is caused in whole or in part by a tree root or roots, the owner shall nevertheless have the duty to repair the sidewalk. The director may grant permission to cut the root(s) after consulting with the city arborist.

12.32.030 Enforcement of chapter; specifications.

The director shall enforce this chapter and establish criteria and specifications for each type of repair.

12.32.040 Civil liability for injuries.

Each owner required by section 12.32.020 to repair a defective sidewalk shall owe a duty to members of the public to keep and maintain the sidewalk area in a non-defective condition. If, as a result of the failure of any owner to maintain or repair the sidewalk as required by section 12.32.020, any person suffers injury or property damage, the property owner shall be liable to such person for the resulting injury or damage.

12.32.050 Indemnity

An owner shall defend and indemnify the City and its employees from any action, claim, or judgment, and any cost or expense incurred, including attorneys’ fees, which arise from the owner’s failure to maintain and repair the sidewalk as required in section 12.32.020. Nothing in this section creates an obligation on an owner to defend or indemnify the city from any action, claim or judgment to the extent any employee or instrumentality of the city caused the defective sidewalk which resulted in the claimant’s injuries or damage.

12.32.060 Purpose of chapter

It is the purpose of this chapter to provide sidewalk repair procedures which are alternative and supplementary to the procedures set forth in the Streets and Highways Code, Division 7, Part 3, Chapter 22, commencing at Section 5600, as those sections now exist or may hereafter be amended or renumbered. The city, in each instance, may

follow the procedure set forth in the Streets and Highways Code or those set forth in this chapter, or some combination thereof.

12.32.070 Notice to repair.

When the director has actual notice of the existence of a defective sidewalk, the director shall give written notice to the owner of the lot, lots or portion of the lot fronting the defective sidewalk, to repair the defective sidewalk. The director may also give notice to the person in possession of the lot, lots or portion of the lot, in addition to the notice given to the owner.

12.32.080 Service of notice.

The notice to repair shall be served on the owner by any of the following methods:

- A. Personal service of a copy of the notice on the owner;
- B. Mailing the notice to the owner by first class mail, postage prepaid, to the address of the owner as set forth on the last equalized assessment roll;
- C. Personal service of a copy of the notice on the person in possession of the lot, lots or portion of the lots, fronting the defective sidewalk, if a copy of the notice so served is also mailed to the owner in accordance with subsection B of this section;
- D. Posting the notice in a conspicuous place at the lot or lots fronting the defective sidewalk, if a copy of the notice so posted is also mailed to the owner in accordance with subsection B of this section;

If the notice is served on the owner by mail, the director shall, not more than thirty (30) days after the mailing of the initial notice to repair, mail to the owner in the same manner an additional notice to repair, marked "second notice," containing the same information set forth in the initial notice.

12.32.090 Contents of notice.

The notice to repair shall, at a minimum, contain the following information:

- A. That the sidewalk is a defective sidewalk.
- B. The nature of the work required to be done, and the cost as estimated by the city.
- C. The manner in which the work is to be done, including the specifications required by the city as to materials and workmanship.
- D. That if the repair is not commenced within the time specified in this

chapter, or once commenced is not completed diligently and without interruption, the director shall immediately commence and complete the repair and the cost thereof shall become a lien on the lot or lots of the owner, fronting the defective sidewalk.

E. Provide that the owner may elect to perform the repairs himself or herself, have the work performed by a licensed contractor, or have the work performed by the city, through a contractor selected by the city or with city employees.

F. An agreement, in a form established by the director, which sets forth the election of the owner and the city's requirements with respect to the manner in which the repairs must be performed.

12.32.100 Time for commencement and completion of repairs by owner.

The owner shall commence the repairs required by the notice to repair within sixty (60) days after the owner elects either to personally perform the repairs, or hire a licensed contractor to perform the repairs, or within sixty (60) days after service of the second notice, whichever occurs first. Once commenced, the repairs shall be completed diligently and without interruption.

12.32.110 Failure to make required repairs.

If, after notice to repair has been served, the owner fails to make the repairs required by the notice within the time set forth in this chapter or fails to respond and execute the agreement, the director shall, within a reasonable period of time, cause the city to make the required repairs, and the cost shall be a lien on the lot or lots of the owner, fronting the defective sidewalk. If the city is required to make the repairs because the owner fails to respond and execute the agreement or fails to make the repairs required by the notice, the city will repair the defective sidewalk by means of removal and replacement of the existing sidewalk.

12.32.120 Payment for repairs.

A. The owner is responsible to pay the cost of all work provided by the city in connection with the repair of a defective sidewalk, including administrative and inspection costs, upon receipt of an invoice from the city.

B. If the owner has not provided payment 30 days after receipt of an invoice for the work provided by the city for repair of a defective sidewalk, the director of finance may initiate proceedings to make the cost of the work performed by the city a special assessment against the parcel(s) of property fronting the repaired sidewalk(s).

C. Notwithstanding any contrary provision of this chapter or the Streets and Highways Code, if the owner demonstrates to the reasonable satisfaction of the city director of finance or designee that payment of the cost of repair of the defective sidewalk will constitute a severe financial hardship on the owner, then no action shall be

taken to collect the repair cost provided that the owner enters into an agreement to pay the costs on terms acceptable to the director of finance. The city manager shall have the authority to enter into and execute the agreement for the city. If the owner fails to perform the agreement, then the city shall have the right to collect the costs in the amount then owing after ten (10) days written notice is given to the owner. This remedy shall be in addition to any other remedies at law or in equity which the city may have.

12.32.130 Assessing costs of sidewalk repairs upon nonpayment of invoice.

A. If the owner has not provided payment 30 days after receipt of an invoice for the work provided by the city for repair of a defective sidewalk, the director of finance may initiate proceedings to make the cost of the work performed by the city a special assessment against the parcel(s) of property fronting the repaired sidewalk(s).

B. The director of finance shall issue a Notice of Special Assessment to all owners who fail to pay for the work provided by the city for repair of a defective sidewalk. This notice shall provide a process for the owner to dispute the amount due with city staff; set forth a due date for payment; and provide a process for the owner to obtain a hearing before a lien hearing officer appointed by the city manager.

C. In order for the owner to obtain a hearing before a lien hearing officer, the owner must first protest the charges with city staff. The notice shall be mailed to the address of the owner as shown on the last equalized assessment roll or such other address of the owners as may be known to the director of finance. The notice shall set the date and time by which shall be filed with the director of finance. No objection or protest received after that date and time shall be considered.

12.32.140 Lien protest process

A protest must be submitted in writing by way of personal delivery, email, fax, or mail. City staff will investigate the protest, and at the conclusion of the city staff resolution process, a "Finding of Facts" letter will be prepared and mailed to the owner. If the owner disagrees with city staff findings, he or she may request a formal hearing before a lien hearing officer.

12.32.150 Notice of hearing

The director of finance shall cause notice of the hearing before the lien hearing office to be mailed to an owner who requests a hearing. Notice shall be mailed not less than ten (10) days prior to the date of the hearing. The notice shall be mailed to the address of the owner as shown on the last equalized assessment roll or such other address of the owner as may be known to the director of finance.

12.32.160 Hearing and decision

At the time fixed for consideration of the protest, the lien hearing officer shall hear the matter from City staff, together with any objections and evidence, of the

owner(s) liable to be assessed for the cost of repair or reconstruction. The lien hearing officer shall follow, as nearly as practicable, those procedures that the city council would have followed had it conducted the hearing. The lien hearing officer may make revisions, corrections, or modifications of the matter as he or she may deem just, and shall submit the report (as revised, corrected or modified) to the city finance staff for adjustment and/or collection. The director of finance shall send the results of the hearing to the protesting owner by first class mail and shall include the date and time of the public hearing to be held by the city council in accordance with Section 12.32.170 of this chapter. The decision of the lien hearing office on the report and on all protests or objections shall be final and conclusive.

12.32.170 Hearing before city council – Special Assessment confirmed – Manner of collection – Time for contest of assessment.

Upon receipt of the director of finance's report, the city council shall schedule a public hearing at which it shall confirm, reject or modify the report. The public hearing shall be limited to the issue of whether the hearing before the lien hearing officer was conducted in accordance with applicable city ordinances. Only those owners who both file an objection or protest and appear before the lien hearing officer shall be permitted to protest at the city council meeting.

Upon confirmation of the report by the city council, the sidewalk repair costs contained therein shall constitute a special assessment against the property fronting the repaired sidewalks. Thereafter, such assessment may be collected at the same time and in the same manner as ordinary secured property taxes are collected, and shall be subject to the same penalties and the same procedures of sale as provided for delinquent ordinary secured property taxes. The assessments shall be subordinate to all existing special assessment liens previously imposed upon the property and paramount to all other liens except those for state, county and municipal taxes with which it shall be upon parity. The lien shall be continued until the assessment and all interest and penalties due and payable thereon are paid. All laws applicable to the levy, collection and enforcement of secured property taxes shall be applicable to such special assessments.

The validity of any assessment made under the provisions of this title shall not be contested in any action or proceeding unless the same is commenced within thirty (30) days after the assessment is confirmed by the city council.

SECTION 3

Section 18.04.020 of the Sacramento City Code is amended to read as follows:

18.04.020 Generally.

A. No building or structure shall be erected or enlarged, and no building permit shall be issued therefore, on any lot if the lot abuts on a dedicated street, or a

future street designated on a community plan, or on a street right-of-way designated in the current right-of-way width guidelines established pursuant to Section 18.04.170 of this chapter, unless:

1. The one-half of the street or streets located on the same side of the street centerline as the lot has been dedicated and improved for the full street frontage of the lot and one traffic lane on the far side of the street for travel is constructed in accordance with the dedication and improvement standards for such street or streets pursuant to Sections 18.04.170, 18.04.180, 18.04.190 and other applicable provisions of this chapter; or

2. Such dedication and improvements have been assured to the satisfaction of the city's director of transportation or the director's designated representative.

The dedication and improvement requirements of this chapter shall also apply to the construction or alteration of all off-street parking areas, off-street loading or unloading areas, off-street pickup and delivery areas, and storage, sale, rental or service areas which are subject to the requirements of Chapter 10.24 of this code. The term "building permit," as used in this chapter, shall include the permit required by Chapter 10.24.

As used in this chapter, the word "lot" shall mean and include one lot or parcel of record, or more than one individual lots or parcels of record which have been combined for purposes of development, construction or improvement as a single unit of land.

B.1. An owner of real property fronting a public street that is improved with street paving and curbs and gutters shall not be issued a building permit for new construction when concrete sidewalks have not been installed unless the owner, either as part of the construction covered by the building permit or under separate agreement satisfactory to the building inspector, constructs public sidewalks to city standards.

2. The provisions of this subsection B shall apply to all property in other than residential use except in industrial areas where a "V" type curb and gutter has been installed.

3. The provisions of this subsection B shall only apply to property in residential use in blocks where the frontage of existing sidewalks, when added to the frontage of unimproved properties, constitutes more than fifty (50) percent of the front footage of such block.

4. The term "block" as used in this section means property facing one side of any street between an intersecting street and the next intersecting street or between an intersection street and the end of a street which terminates in other than an intersection.

5. The city council may, upon application of a property owner affected by the provisions herein, waive the requirements for installation of sidewalks because of unusual circumstances or hardship.